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ARIZONA ATTORNEY GENERAL

July 23, 1954
Opinion No. 54-111

TO: Mr. Cecil E. O'Harrow
Deputy Administrator
Office of State Chemist
P.O. Box 2127
Mesa, Arizona

RE: Registration of economic poisons

- QUESTION: 1. Under the provisions of the Economic Poisons Act of 1945, does the state chemist have the right to question the directions for use of an economic poison as submitted for registration purposes and refuse or accept registration accordingly?
2. Inasmuch as there is no office or department under the Arizona State government which investigates economic poisons regarding their degree of safeness as concerns agriculture and public health, would not the proper authority for accepting registration of questionable items of this nature be "Federal acceptance of registration"?

Authority for registering economic poisons is found in Section 68-1206, A.C.A. 1939, as amended, which reads as follows:

"68-1206. Registration.--(a) It shall be unlawful for any person acting for himself, or as an agent, to sell, offer for sale, or expose for sale, within the state, any economic poison that has not been registered as required by this act.

(b) Any person who may desire to sell or offer for sale, either by himself or through another person, an economic poison in this state, shall first file with the state chemist, on registra-

tion forms supplied by him, a signed statement, giving his name and address and the following information with respect to each brand or variously labeled economic poison, in the following order:

- (1) The name of each economic poison, exactly as it is to appear on the label. Each variation in name or in composition constitutes a separate item.
 - (2) Name and formula and percentage by weight of each active ingredient.
 - (3) Total percentage, by weight, of inert ingredients.
 - (4) The antidote.
 - (5) A copy or proof of the label that will be used.
 - (6) Directions for use wherein indicated.
- (c) Every registration of an economic poison under the provisions of this act shall expire on the thirty-first day of December of the year in which said registration was made.
- (d) The state chemist shall issue a certificate of registration to every registrant for each economic poison registered by such registrant under the provisions of this act."

You will note that under the above section, a person desiring to sell, or offer for sale, an economic poison must furnish the state chemist with a copy of the directions regarding the use of such economic poison. The fact that these directions may be misleading or may recommend a use which the state chemist does not consider proper does not justify a refusal on his part to register the economic poison of the registrant.

The requirement that all economic poisons must be registered before being offered for sale is for the purpose of enabling the state chemist in enforcing the other provisions of the Act. Without the information furnished when an economic poison is registered, the state chemist would have a difficult job determining what poisons were in existence and whether they are adulterated or misbranded. The certificate of registration issued each registrant who has registered an economic poison merely indicates he has complied with the provision of the Act requiring registration and in no way suggests approval by the state chemist of the economic poison for the use or uses the manufacturer recommends.

In your letter requesting our opinion on the question set forth hereinabove, you call our attention to Section 66-1215, A.C.A. 1939, as amended, which reads as follows:

"68-1215. Seizure of misbranded, etc., goods.--The state chemist may seize and quarantine any economic poison which is adulterated, or misbranded within the meaning of this act, or detrimental to agriculture or to the public health, or which is otherwise not in conformity with any provisions of this act. It shall be unlawful for any person to transport, destroy or dispose of any quarantined economic poison without securing a permit from the state chemist." (Emphasis supplied)

and ask if this section would not justify your position in questioning directions for economic poisons as submitted for registration purposes and refuse to accept registration accordingly. We cannot agree with you as to your construction of this section. It is our opinion that, once a registrant has furnished the state chemist with the information requested of him under provisions of Section 68-1206, supra, the state chemist is under a duty to register the economic poison and issue a certificate of registration to the registrant.

The answer to question #2 is that, the state chemist may not refuse registration of an economic poison regardless of whether or not the federal government has registered such economic poison. It is the opinion of the Department of Law that when requirements have been met as contained in Section 68-1206, supra, it is the duty of the state chemist to issue a certificate of registration to the registrant.

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The Attorney General

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